

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Restoring Internet Freedom)	WC Docket No. 17-108

MOTION FOR EXTENSION OF TIME

The National Hispanic Media Coalition (“NHMC”) respectfully requests, pursuant to 47 C.F.R. § 1.46, an extension of time to file comments and reply comments responsive to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking¹ (“NPRM”) in the above-captioned docket. An extension is essential to ensure that all evidence relevant to this proceeding is available to the public, and that the public has adequate time to analyze the evidence and comment accordingly. Specifically, the Commission must produce the approximately 47,000 open internet complaints that it has received, and documents related to the open internet ombudsperson’s interactions with internet users, all of which are the subject of an unfulfilled Freedom of Information Act (“FOIA”) request filed by NHMC. The Commission has already failed to meet the FOIA deadline, and FCC FOIA officers have offered several inconsistent timelines for document production, ranging from six months to two years. Thus, in the interest of prudence, fairness, and compliance with the Administrative Procedure Act (“APA”),² NHMC respectfully requests an extension of the initial comment deadline, to be set 60 days after the

¹ *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking, FCC 17-60 (May 23, 2017) (*Restoring Internet Freedom NPRM*).

² *See* 5 U.S.C. § 706(2)(A).

Commission complies with the outstanding FOIA request and produces all relevant evidence.³

BACKGROUND

In order to ascertain relevant evidence that must be part of the record for the above referenced proceeding, NHMC submitted several FOIA requests⁴ seeking documents pertinent to the Commission's enforcement of the *Open Internet Order*⁵ that are not available to the public. NHMC's first FOIA request, submitted to the Commission on May 1, 2017, only 4 days after the draft NPRM was released,⁶ sought "all documents, information, and communications related to informal complaints submitted to the FCC since June 2015 under the category of Open Internet/Net Neutrality"⁷ and for "all records, including but not limited to emails, phone calls, handwritten or typed notes, and calendar invites since June 2015 indicating when consumers, businesses, and other organizations sought guidance from the ombudsperson."⁸ NHMC submitted subsequent FOIA requests on

³ See Attachment A.

⁴ See Attachments A-D.

⁵ See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) (*Open Internet Order*).

⁶ See Attachment A. Chairman Ajit Pai announced the intent to open a proceeding to revoke the 2015 *Open Internet Order* in a speech at a Newseum event titled "The Future of Internet Freedom" on April 26, 2017. See *Remarks Of FCC Chairman Ajit Pai At The Newseum, The Future Of Internet Freedom*, Washington, DC (Apr. 26, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0427/DOC-344590A1.pdf. On April 27, 2017 the Commission released a draft of the NPRM, *Restoring Internet Freedom*, Notice of Proposed Rulemaking, WC Docket No. 17-108, (Draft Rel. Apr. 27, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344614A1.pdf. The final NPRM was released on May 23, 2017.

⁷ See Attachment A. NHMC exported publicly available data from the Consumer Complaint Data Center on April 28, 2017 showing that close to 37,000 informal Open Internet/Net Neutrality complaints had been filed with the Commission during the relevant time period. See Attachment F stating that there are approximately 47,279 information complaints related to "Open Internet."

⁸ See Attachment A. On June 12, 2017, Mr. Hennigan informed NHMC over the phone that thousands of documents were responsive to this request. Mr. Hennigan also made it known that he had not started processing these documents and therefore the documents would not be available for

May 5, 2017 and May 17, 2017 seeking additional data regarding internet complaints submitted by consumers to the Commission.⁹

To date, the FCC has only turned over a fraction of the documents requested.¹⁰ On May 22, 2017, the FCC first notified NHMC by email that the requests could not be processed “as currently framed.”¹¹ Carmen Scurato, NHMC’s Director of Policy & Legal Affairs immediately called Mike Hennigan in the FCC’s Consumer & Governmental Affairs Bureau to further clarify the request. During this initial interaction, Mr. Hennigan confirmed that the documents requested are accessible through FOIA, but notified NHMC that producing all informal Net Neutrality/Open Internet complaints would take approximately six to nine months to complete due to the overwhelming number of responsive documents.¹² On this same day, Ms. Scurato agreed to receive all the data in the form of an Excel spreadsheet for all informal complaints, and reduce the production of the description fields, attachments, and provider responses for the informal complaints for the first 100 samples of each category. This agreement was premised on the Commission’s representation that NHMC would receive an enhanced spreadsheet with data points that could be cross-referenced with publicly available data.¹³

production by the already agreed upon extended deadline of June 20, 2017. Mr. Hennigan continued to explain that such documents would be produced on a rolling basis, but did not provide NHMC with a date of completion. During a follow-up phone conversation on June 19, 2017, Mr. Hennigan again reiterated that the ombudsperson had received large volumes of complaints and correspondence, and said that NHMC would receive documents, as they were ready.

⁹ See Attachments B-D.

¹⁰ On June 21, 2017 NHMC received samples of informal open internet complaints submitted by consumers.

¹¹ See Attachment E.

¹² During a call with Stephanie Kost and Mike Hennigan on June 29, 2017, Mr. Hennigan first stated that it would take a year to 18 months to produce all informal complaints, and later said such a process could take up to two years.

¹³ See Attachment G.

Ms. Scurato and Mr. Hennigan had several subsequent interactions by both email and phone, to work towards the production deadline of June 20, 2017. On June 21, NHMC received the first allegedly responsive documents referenced above, but the production did not adequately respond to the FOIA request.¹⁴ The response was comprised of incomplete samples of informal complaints and did not include the enhanced summary of the data for all informal complaints as promised by the Commission.¹⁵ Throughout this process, NHMC has been meticulous about contacting the Commission and following-up with clarifying information as requested. Yet, at the time of the filing of this Motion, it is clear that such information will not be made available in time for NHMC or other members of the public to have adequate time to review and comment on evidence essential to understanding the Commission's enforcement of the *Open Internet Order*.

DISCUSSION

This extension is necessary to permit NHMC and other interested parties to review and make public critical evidence that is not currently available, but is nonetheless central to numerous questions¹⁶ that the FCC has posed in the instant NPRM seeking to revoke the FCC's 2015 *Open Internet Order*. The 47,279¹⁷ open internet complaints are critical evidence and the public should be afforded time to review so that it can adequately analyze and comment on the benefits of the *Open Internet Order*'s rules and its reclassification of broadband under Title II of the Communications Act.

¹⁴ See Attachment G.

¹⁵ See Attachment F (note letter is dated June 20, 2017 but was not received via email until the next day, June 21, 2017). An analysis of this production revealed that it was incomplete, prompting NHMC to write a letter outlining several concerns to Stephanie Kost, the FOIA Public Liaison, on June 26, 2017. See Attachment G.

¹⁶ See *infra* notes 25-30.

¹⁷ See Attachment F.

The Commission's NPRM ignores a substantial amount of data that is critical to evaluating the success of the *Open Internet Order*, and willfully neglects to mention or mischaracterizes two years of enforcement that occurred under the rules.¹⁸ For example, the NPRM asks "what, if any, changes have been made as a result of Title II reclassification that have had a positive impact on consumers?...Is there any evidence, for example, that consumers' online experiences and Internet access have improved due to policies adopted in the *Title II Order*?"¹⁹ The NPRM also proposes eliminating the ombudsperson role and asks, "is the role of an ombudsperson necessary to protect consumers, businesses and other organizations' interests."²⁰ These questions seek evidence that the Commission holds in its exclusive possession, while astonishingly, failing to even acknowledge the 47,000+ consumer complaints or the thousands of documents illustrating interactions between the ombudsperson and internet users.

NHMC's FOIA request sought all informal consumer complaints, which are necessary to answer whether the rules had a "positive impact on consumers." Moreover, any comment on this question would be incomplete and not based on the full record before the Commission, until all appropriate data about internet users' interactions with the Commission are made publicly available and placed in the docket. Similarly, it would be virtually impossible to answer whether the role of the ombudsperson is necessary to protect internet users without knowing how often the ombudsperson was called on to assist them.

Under the APA, the Commission cannot ignore evidence out of convenience. In a rulemaking proceeding an "agency must examine the relevant data and articulate a

¹⁸ *Restoring Internet Freedom NPRM* at paras. 96-99.

¹⁹ *Id.* at para. 51.

²⁰ *Id.* at para. 97.

satisfactory explanation for its action including a rational connection between facts found and the choice made.”²¹ An agency may not “entirely fail[] to consider an important aspect of the problem.”²² Additionally, “[i]t is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, [to a] critical degree, is known only to the agency.”²³ In this case, the Commission has the data critical to the proceeding, but such information is ignored in the NPRM and has not been made publicly available for comment. Just as the Commission is not allowed to cherry-pick data, it cannot ignore data that does not support the outcome proposed in the NPRM.²⁴

Moreover, the NPRM affirmatively asks for the evidence requested through NHMC’s FOIA requests that are material to the proceeding:

Is there **evidence** of actual harm to consumers sufficient to support maintaining the Title II telecommunications service classification for broadband Internet access service? Is there any **evidence** that the likelihood of these events occurring decreased with the shift to Title II?²⁵

Conversely, what, if any, changes have been made as a result of Title II reclassification that have had a positive impact on consumers? Was Title II reclassification necessary for any of those changes to occur? Is there any **evidence**, for example, that consumers’ online experiences and Internet access have improved due to policies adopted in the *Title II Order*?²⁶

²¹ See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co. (State Farm)*, 463 U.S. 29, 43 (1983) (internal citations and quotations omitted).

²² See *id.* at 43.

²³ See *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237 (2008) (internal citation and quotations omitted). In *Am. Radio Relay League v. FCC*, the Am. Radio Relay League had requested through FOIA five studies gathered from field tests performed by the FCC’s Office of Engineering and Technology. See *id.* However, certain portions of the studies were redacted, and an *in camera* review of the documents revealed staff summaries of test data, scientific recommendations and test analysis and conclusions regarding the methodology. The court noted that when “an agency’s determination is based upon a complex mix of controversial and uncommented upon data and calculations, there is no APA precedent allowing an agency to cherry-pick a study on which it has chosen to rely in part.” See *id.* (internal citations and quotations omitted).

²⁴ See *id.* at 237.

²⁵ *Restoring Internet Freedom NPRM* at para. 50 (emphasis added).

²⁶ *Id.* at para. 51 (emphasis added).

How does the rule benefit consumers, and what are its costs? When is “throttling” harmful to consumers?²⁷

Would the original transparency rule, which has been continuously operational since it came into effect following adoption of the *Open Internet Order*, be sufficient to protect consumers? ... For example, does the full and accurate disclosure of service plan information to consumers carry with it most of the benefits of the rule? How often do non-consumers rely on the additional disclosures required by the transparency rule?²⁸

Additionally, we seek comment on streamlining future enforcement processes. For instance, we propose eliminating the ombudsperson role. **Is the role of an ombudsperson necessary to protect consumer, business, and other organizations’ interests** when the Commission has a Bureau—the Consumer and Governmental Affairs Bureau (CGB)—dedicated to protecting consumer interests? **Our experience suggests that consumers are comfortable working with CGB, and typically did not call on the ombudsperson specifically.** Has the ombudsperson been called to action to assist in circumstances that otherwise could not have been handled by CGB?²⁹

Can we infer that parties heeded the Commission’s encouragement to “resolve disputes through informal discussions and private negotiations” without Commission involvement, except through the informal complaint process? Does the lack of formal complaints indicate that dedicated, formal enforcement procedures are unwarranted?³⁰

These questions are at the heart of the effectiveness of the rules established in the *Open Internet Order* and the benefits that such rules have for internet users. Nowhere in the NPRM does the Commission address the 47,279 open internet complaints submitted by consumers, or the thousands of documents verifying interactions between the ombudsperson and consumers. The fact that the Commission cannot readily produce this FOIA request raises serious questions about whether the Commission itself has examined this data and how the open internet rules are impacting consumers. Furthermore, such questions are critical to the outcome of the proceeding and cannot be answered by members of the public

²⁷ *Id.* at para. 83.

²⁸ *Id.* at para. 90.

²⁹ *Id.* at para. 97 (emphasis added).

³⁰ *Id.* at para. 98.

because the information is only available to the Commission at present. In the interest of prudent rulemaking, NHMC recommends that the Commission not only release the documents to NHMC, but also to the public and provide adequate time to review and comment. Therefore, it is in the best interest of the Commission and the public to extend the comment deadline and reply comment deadline until it is able to release documents requested by NHMC, and then provide NHMC and members of the public adequate time to review and comment on this information that is vital to the proceeding.

CONCLUSION

Extending the comment and reply comment deadlines would only preserve the status quo and would not prejudice any party; in fact, it would help the Commission ensure that all relevant evidence is considered as part of its current rulemaking proceeding. All parties would benefit from having more time to adequately review evidence vital to numerous questions posed in the NPRM. Accordingly, NHMC respectfully requests that the Commission extend the comment and reply comment deadlines in this proceeding, setting the initial comment deadline at 60 days after the Commission produces all relevant evidence requested by these FOIA submissions.

Respectfully Submitted,

/s/

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July 7, 2017

Attachments to NHMC's Motion for Extension of Time

WC Docket No. 17-108

Attachment A

NHMC FOIA Request Filed May 1, 2017
FCC 2017-000565



National Hispanic
Media Coalition

Submitted via FOIA Online
<https://foiaonline.regulations.gov>

May 1, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This letter is a request from the National Hispanic Media Coalition (NHMC) under the Freedom of Information Act (FOIA) 5 U.S.C. § 522, implemented as 47 C.F.R. § 0.461, to the Federal Communications Commission (FCC).

NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- **(1)** All formal complaints filed since June 2015 under 47 C.F.R. § 8.12.
- **(2)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 under the category of Open Internet/Net Neutrality, for all sub-issues such as blocking, data caps, inaccurate disclosures/transparency, throttling, and other. NHMC seeks the following information for each informal complaint:
 - (a) Date of complaint
 - (b) City and State of filer
 - (c) Subject of complaint
 - (d) Description of complaint
 - (e) Internet method (i.e., Wireless, Cable, Satellite, DSL, Fiber)
 - (f) Company Name
 - (g) Filer's relationship to company
 - (h) Whether filer contacted company about the issue
 - (i) Whether filer submitted complaint on behalf of someone else
 - (j) Any attachments included with the filer's complaint
 - (k) Resolution of complaint, including provider's response letters

Headquarters | 65 South Grand Ave., Suite 200 | Pasadena CA 91105 | 626 792 6462
Washington, DC Office | 718 7th St NW | Washington, DC 20001 | 202 596 2063

- **(3)** All records, including but not limited to emails, phone calls, handwritten or typed notes, and calendar invites since June 2015 indicating when consumers, businesses, and other organizations' sought guidance from the ombudsperson.
- **(4)** All records, including but not limited to emails, phone calls, handwritten or typed notes, and calendar invites since June 2015 indicating when consumers, businesses, and other organizations' sought guidance from the Consumer and Governmental Affairs Bureau (CGB).

NHMC seeks disclosure of the above requested documents because the documents will "contribute significantly to public understanding of the operations or activities of the government," and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these "records are not sought for commercial use." 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC's enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy provider violations of the bright-line rules of no blocking, no throttling, no paid prioritization, as well as the transparency rule.

Thank you for your consideration of this request.

Respectfully submitted,

Carmen Scurato, Esq.
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Attachment B

NHMC FOIA Request Filed May 05, 2017
FCC 2017-000577



National Hispanic
Media Coalition

Submitted via FOIA Online
<https://foiaonline.regulations.gov>

May 5, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This letter is a request from the National Hispanic Media Coalition (NHMC) under the Freedom of Information Act (FOIA) 5 U.S.C. § 522, implemented as 47 C.F.R. § 0.461, to the Federal Communications Commission (FCC).

NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- **(1)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 for internet complaints relating to speed issues, including all sub-issues such inconsistent speed, less than advertised speed, and other.
- **(2)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 for internet complaints relating to interference issues, including all sub-issues such jamming/blocking (including Wi-Fi), and other.
- **(3)** All documents, information, and communications related to informal complaints submitted to the FCC since June 2015 for Internet complaints relating to privacy, whether or not the individual had their personal information been accessed, obtained or used by an unauthorized person.

NHMC seeks the following information for each informal complaint:

- (a) Date of complaint
- (b) City and State of filer
- (c) Subject of complaint
- (d) Description of complaint
- (e) Internet method (i.e., Wireless, Cable, Satellite, DSL, Fiber)
- (f) Company Name
- (g) Filer's relationship to company
- (h) Whether filer contacted company about the issue
- (i) Whether filer submitted complaint on behalf of someone else
- (j) Any attachments included with the filer's complaint
- (k) Resolution of complaint, including provider's response letters

NHMC seeks disclosure of the above requested documents because the documents will "contribute significantly to public understanding of the operations or activities of the government," and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these "records are not sought for commercial use." 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC's enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy provider violations of the bright-line rules of no blocking, no throttling, no paid prioritization, as well as the transparency rule.

Thank you for your consideration of this request.

Respectfully submitted,

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Attachment C

NHMC FOIA Request Filed May 17, 2017
FCC 2017-000638



National Hispanic
Media Coalition

Submitted via FOIA Online
<https://foiaonline.regulations.gov>

May 17, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This letter is a request from the National Hispanic Media Coalition (NHMC) under the Freedom of Information Act (FOIA) 5 U.S.C. § 522, implemented as 47 C.F.R. § 0.461, to the Federal Communications Commission (FCC).

NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- All documents, information, and communications related to informal internet billing complaints submitted to the FCC since June 2015. NHMC seeks the following information for each informal complaint:
 - (a) Date of complaint
 - (b) City and State of filer
 - (c) Subject of complaint
 - (d) Description of complaint
 - (e) Internet method (i.e., Wireless, Cable, Satellite, DSL, Fiber)
 - (f) Company Name
 - (g) Filer's relationship to company
 - (h) Whether filer contacted company about the issue
 - (i) Whether filer submitted complaint on behalf of someone else
 - (j) Any attachments included with the filer's complaint
 - (k) Resolution of complaint, including provider's response letters

May 17, 2017

NHMC FOIA Request

NHMC seeks disclosure of the above requested documents because the documents will “contribute significantly to public understanding of the operations or activities of the government,” and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these “records are not sought for commercial use.” 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC’s enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy potential violations.

Thank you for your consideration of this request.

Respectfully submitted,

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Attachment D

NHMC FOIA Request Filed May 17, 2017
FCC 2017-000639



National Hispanic
Media Coalition

Submitted via FOIA Online
<https://foiaonline.regulations.gov>

May 17, 2017

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This letter is a request from the National Hispanic Media Coalition (NHMC) under the Freedom of Information Act (FOIA) 5 U.S.C. § 522, implemented as 47 C.F.R. § 0.461, to the Federal Communications Commission (FCC).

NHMC seeks records regarding the FCC's enforcement of the 2015 *Open Internet Order*, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015.

Documents Requested:

- **(1)** All documents, information, communications, and guidance used by the Consumer and Governmental Affairs Bureau to resolve internet complaints received either by phone or online since June 2015.
- **(2)** All documents, information, communications, and guidance used by the Enforcement Bureau to resolve internet complaints received either by phone or online since June 2015.

May 17, 2017

NHMC FOIA Request

NHMC seeks disclosure of the above requested documents because the documents will “contribute significantly to public understanding of the operations or activities of the government,” and all duplication fees should be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). NHMC also asserts that these “records are not sought for commercial use.” 5 U.S.C. § 552(a)(4)(A)(ii)(I). Further, disclosure of this information would provide significant insight into the FCC’s enforcement of the 2015 *Open Internet Order*, and whether consumers utilize the current rules to address and remedy potential violations.

Thank you for your consideration of this request.

Respectfully submitted,

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Attachment E

Email on May 22, 2017 from Mike Hennigan, Consumer Policy Division,
Consumer & Governmental Affairs Bureau to Carmen Scurato

From: Mike Hennigan Mike.Hennigan@fcc.gov
Subject: FOIAs 2017-565, 577, 638, & 639
Date: May 22, 2017 at 11:19 AM
To: cscurato@nhmc.org

MH

Dear Ms. Scurato, this email is in reference to your recent FOIA requests you filed with the Federal Communications Commission regarding records related to the enforcement of the 2015 Open Internet Order. We are unable to process your requests as currently framed. Please give me a call on 202 418 2869 so we may discuss clarifying the scope of your requests.

Sincerely,

Mike Hennigan
Consumer Policy Division
Consumer & Governmental Affairs Bureau
202-418-2869

Attachment F

Letter from the FCC Consumer & Government Affairs Bureau
In Response to FOIA Nos. 2017-565, 2017-577, 2017-638 & 2017-639
Dated June 20, 2017



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554



June 20, 2017

Carmen Scurato
National Hispanic Media Coalition
cscurato@nhmc.org

FOIA Nos. 2017-565, 2017-577, 2017-638 & 2017-639

Dear Ms. Scurato:

This letter responds to your recent Freedom of Information Act ("FOIA") requests received by the Federal Communications Commission (FCC or Commission) and assigned to the Consumer & Governmental Affairs ("CGB"), Enforcement ("EB") and Wireline Competition Bureaus ("WCB"). Among other things, you are requesting documents, information and communications regarding the "FCC's enforcement of the 2015 Open Internet Order, GN Docket No. 14-28, FCC-15-24 (Rel. Mar. 12, 2015) that went into effect on June 12, 2015." We are responding to your requests electronically. Pursuant to section 0.461(g)(1)(i) of the Commission's rules, the date for responding to your requests has been extended from May 31, 2017, to June 20, 2017, due to a need to search records from multiple offices of the Commission.

Please be advised that your four FOIA requests were aggregated for calculation of the FOIA fees. On May 22, 2017, via telephone, you spoke with Mike Hennigan of my staff regarding your requests and you were advised that our search located approximately 47,279 complaints related to "Open Internet." You advised Mr. Hennigan that you would be interesting in receiving the first 100 samplings of the complaints we located, per complaint category and complaints sub-categories for complaints filed in "2015, 2016 as well as 2017."

Therefore, CGB conducted a search of the databases in which we maintain the records of informal complaints filed by, or on behalf of, consumers. Our search revealed approximately 1000 complaints that are responsive to your request, which are attached. We have attached data you are requesting related to the approximately 47,279 complaints related to "Open Internet." Also, as you requested, our search revealed 308 pages of carrier responses and approximately 1,500 emails related to your request. WCB has advised us that they have potentially responsive documents which they are continuing to process, and will respond to your request as expeditiously as possible. EB informed CGB that a search of their records identified no responsive records.

Also, on May 22, 2017, you agreed that due to the volume of documents located and the number of hours involved in processing your request, we would provide you with responsive documents on a rolling basis in order to complete your request in the most efficient and timely manner possible. Please be advised that the FCC receives many complaints and comments that do not involve violations of the Communications Act or any FCC rule or order. Thus, the existence of a complaint or comment filed against a particular carrier or business entity does not necessarily indicate any wrongdoing by any individuals or business entities named in the complaint or comment. The attached complaints represents information provided by the public that has not been verified by the FCC.

Record responsive to your request were withheld or redacted under FOIA Exemption 6.¹ Exemption 6 protects files containing personally identifiable information disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Balancing the public's right to disclosure against the individual's right to privacy, we have determined that release of this information would constitute a clearly unwarranted invasion of personal privacy. Therefore, all FCC employee's names, complainant's addresses, and the complainant's telephone numbers were redacted under Exemption 6

FOIA and FCC rules require the FCC to charge requesters for time spent searching for and reviewing responsive documents, and for copying them." Pursuant to section 0.466(a)(5)-(7) of the Commission's rules, you have been classified as category (2), "educational requesters, non-commercial scientific organizations, or representatives of the news media."² As an "educational requester, non-commercial scientific organization, or representative of the news media," the Commission assesses charges to recover the cost of reproducing the records requested, excluding the cost of reproducing the first 100 pages. The production in response to your request is electronic, and did not involve any duplication. Therefore, you will not be charged any fees.

You have requested a fee waiver pursuant to section 0.047(e) of the Commission's rules.³ As you are not required to pay any fees in relation to your FOIA request, the Office of the General Counsel, which reviews such request, does not make a determination on your request for a fee waiver.

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.⁴ You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12th St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action" and the application should refer to FOIA Nos. 2017-565, 2017-577, 2017-638 and 2017-639.

¹ 5 U.S.C. § 552(b)(6).

² 47 CFR § 0.466(a)(5)-(7).

³ 47 CFR § 0.470(e).

⁴ 47 CFR §§ 0.461(j), 1.115; 47 CFR § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
FCC, Office of the Managing Director,
Performance Evaluation and Records Management
445 12th St SW,
Washington, DC 20554
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's Office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,



Nancy Stevenson
Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Attachments

Attachment G

Letter from NHMC to the FOIA Public Liaison
Submitted via email on June 26, 2017



Submitted via Email
Stephanie.Kost@fcc.gov
FOIA Public Liaison
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

June 26, 2017

CONCERNS RE: RESPONSES TO NHMC's FOIA REQUEST FCC 2017-565

Dear Ms. Kost,

I write because I have several concerns about a FOIA request that I submitted to the Federal Communications Commission (FCC) on May 1, 2017, through the online portal at <https://foiaonline.regulations.gov>. The request was subsequently labeled FCC 2017-565.

My point of contact at the FCC throughout this request has been Mike Hennigan. In his first email I received May 22, 2017 Mr. Hennigan stated: "We are unable to process your requests as currently framed." This was of grave concern to me and I spoke with Mr. Hennigan on the phone to provide clarity regarding the information and documents I was seeking. Mr. Hennigan explained it would be impossible to provide all informal complaints within the time frame and suggested based on my request that he could provide "all the data" but then narrow a portion of my FOIA request to the first 100 samples of each category for other data points I requested, such as the description, attachments, and carrier/provider responses. I would like to be clear that I only agreed to this sample based on the premise that I would receive "all the data" - which I understood (and believed Mr. Hennigan did as well) as providing me with all the other non-private information requested for the all the informal Open Internet/Net Neutrality complaints.

To further clarify what I mean by "all the data" I did offer to send the attached spreadsheet to Mr. Hennigan, but he informed me that was not necessary since he understood my request. I am attaching the spreadsheet now so there is no further confusion. This was a spreadsheet I exported from the FCC's own Consumer Complaint Center data center on April 28, 2017, only a few days prior to submitting request 2017-565 on May 1, 2017. I also reviewed the Consumer Complaint [submission form](#) for "Internet" complaints, with the "Internet Issue" of "Open

Internet/Net Neutrality” complaints to see what data points consumers are asked. The data points were all captured in my FOIA Request. This form also provides the basis of what data points/information is not made publicly available on the [Consumer Complaint Data Center](#) - some which are necessary to withhold due to privacy concerns, yet other information is not private but remains off the public-facing data center. In my request to Mr. Hennigan for “all the data” I understood that I would receive a spreadsheet similar to the one I have attached to this email but with all the “not-private” fields populated. Instead, what I received was a spreadsheet with “totals” that cannot in anyway be cross-references with the information that is already publicly available.

If Mr. Hennigan had made it clear from our first discussion that such data would not be possible to produce, I would not had agreed to receiving “samples.” It is very clear from my most recent calls and emails with Mr. Hennigan that the only way to resolve this is to honor the initial request for all informal Open Internet/Net Neutrality complaints. I did send Mr. Hennigan an email this past Friday June 23, 2017 and he stated that I would need to file a new request in order to receive more informal complaints beyond the initial sample -- I disagree.

The FCC FOIA Office should honor the May 1, 2017 FOIA Request 2017-565 for all informal Open Internet/Net Neutrality complaints and provide a time frame for when these documents will be produced.

Moreover, I would like to bring to your attention the call I had with Mr. Hennigan the day before the first wave of production documents were due on June 19, 2017, where Mr. Hennigan said he could either send me the “data” and samples, or withhold the data and start producing all informal complaints. I pressed him on why this would be a mutually exclusive request, and did not receive a satisfying response. At this point in our conversation, I was very concerned that altering my request would further delay production and it was important to see what documents Mr. Hennigan had already gathered.

Mr. Hennigan and I had spoken the week prior on June 12, 2017 and had left a few things unresolved. In that earlier call, Mr. Hennigan explained that the search for relevant documents under request 3 for documents from the ombudsperson in FOIA 2017-565 produced “a lot, a lot of documents” and that he had yet to start processing them. Mr. Hennigan said that Michael Janson had sent over thousands of responsive documents, which must first be printed and then scanned back into the Adobe redaction software. He also mentioned he received documents from Parul Desai responsive to this request, but did not specify any amount. Mr. Hennigan said such documents would have to be produced on a rolling basis, and did not give me any estimate for a completion date to this request. I did subsequently follow-up regarding an estimate on Friday June 23, 2017 and Mr. Hennigan said he was unable to provide such estimate, but that I should start seeing documents as early as this week.

Also, on our call on June 12, 2017, Mr. Hennigan mentioned that Mr. Janson had alerted him to a prior FOIA Request from June 2016 with approximately 20,000 documents responsive to my FOIA Request for informal Open Internet/Net Neutrality complaints. Mr. Hennigan said he would look to verify these documents, and asked whether I would be interested. I answered in the affirmative and asked that he please let me know as soon as he verified that these 20,000 or so documents were responsive. Based from this conversation I understood these documents to be informal complaints relating to Open Internet issues that had already been redacted, and therefore could be easily produced as responsive to my request. I did not receive any follow-up emails or calls from Mr. Hennigan, which is what led to our call on June 19, 2017.

When I spoke to Mr. Hennigan on June 19, 2017 again about the 20,000 documents he told me he had in fact “looked into it” and that Mr. Janson was “mistaken” and that the documents were not responsive. I asked if Mr. Hennigan could provide me with the frame of the original FOIA request so I could verify this, but he was unable to do so. Mr. Hennigan then mentioned there were 639 emails that may be responsive from a previous request- he asked whether I would like those documents, and again I answered in the affirmative. I have yet to see those emails and would like a further investigation into the 20,000 documents that Mr. Janson flagged as responsive.

Finally, the documents requested from the FCC in response FOIA Request 2017-565 are pertinent to an open proceeding. Such documents are critical for the National Hispanic Media Coalition and other members of the public to comments on proposals set forth in the *Restoring Internet Freedom* Notice of Proposed Rulemaking WC Docket No. 17-108.

To summarize, I request that:

1. The FCC FOIA Office honor the May 1, 2017 FOIA Request 2017-565 for all informal Open Internet/Net Neutrality complaints and provide a time frame for when these documents will be produced.
2. The FCC FOIA Office provide an estimate for the completion date for the rolling production for documents responsive to Request #3 in 2017-565 regarding the role of the ombudsperson.
3. A further investigation into the 20,000 documents that Mr. Janson flagged as responsive to my request for informal Open Internet/Net Neutrality complaints based on a prior request submitted to the FCC in June 2016.
4. A clarification of the 639 responsive emails that Mr. Hennigan mentioned during our call on June 19, 2017 and an estimated time for production.

Thank you for taking the time to review this request. I look forward to your response and would also like to discuss next steps with you in further detail later this afternoon.

June 26, 2017

NHMC FOIA Request 2017-565

Respectfully,

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